



March 28, 2003

ENGROSSED HOUSE BILL No. 1365

DIGEST OF HB 1365 (Updated March 26, 2003 11:05 AM - DI 106)

Citations Affected: IC 32-29.

Synopsis: Equitable subrogation. Provides that a mortgagee may not be denied equitable subrogation of a lien solely because the: (1) mortgagee is a lending institution that had constructive notice of the lien; (2) higher priority lien was released; or (3) mortgagee had title insurance. Excludes municipal sewer liens from equitable subrogation. Makes a change consistent with the expiration on July 1, 2003, of the chapter in the Indiana Code controlling the release of a mortgage by a title insurance company.

Effective: July 1, 2003.

Foley, Kuzman

(SENATE SPONSOR — CLARK)

January 14, 2003, read first time and referred to Committee on Financial Institutions.
February 26, 2003, amended, reported — Do Pass.
March 3, 2003, read second time, ordered engrossed. Engrossed.
March 4, 2003, read third time, passed. Yeas 94, nays 1.

SENATE ACTION

March 13, 2003, read first time and referred to Committee on Judiciary.
March 27, 2003, amended, reported favorably — Do Pass.

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EH 1365—LS 7202/DI 105+



March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-29-1-11, AS ADDED BY P.L.2-2002,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 11. (a) This chapter does not limit:

4 (1) the right to assign, mortgage, or pledge the rents and profits
5 arising from real estate;

6 (2) the right of an assignee, a mortgagee, or a pledgee to collect
7 rents and profits for application in accordance with an
8 assignment, a mortgage, or a pledge; or

9 (3) the power of a court of equity to appoint a receiver to take
10 charge of real estate to collect rents and profits for application in
11 accordance with an assignment, a mortgage, or a pledge.

12 (b) A person may enforce an assignment, a mortgage, or a pledge of
13 rents and profits arising from real property:

14 (1) whether the person has or does not have possession of the real
15 estate; and

16 (2) regardless of the:

17 (A) adequacy of the security; or

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- 1 (B) solvency of the assignor, mortgagor, or pledgor.
2 (c) If a person:
3 (1) enforces an assignment, a mortgage, or a pledge of rents and
4 profits arising from real estate; and
5 (2) does not have possession of the real estate;
6 the obligations of a mortgagee in possession of real estate may not be
7 imposed on the holder of the assignment, mortgage, or pledge.
8 **(d) A mortgagee seeking equitable subrogation with respect to**
9 **a lien may not be denied equitable subrogation solely because:**
10 **(1) the mortgagee:**
11 **(A) is engaged in the business of lending; and**
12 **(B) had constructive notice of the intervening lien over**
13 **which the mortgagee seeks to assert priority;**
14 **(2) the lien for which the mortgagee seeks to be subrogated**
15 **was released; or**
16 **(3) the mortgagee obtained a title insurance policy.**
17 **(e) Subsection (d) does not apply to a municipal sewer lien under**
18 **IC 36-9-23.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1365 as introduced.)

BARDON, Chair

Committee Vote: yeas 14, nays 0.

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EH 1365—LS 7202/DI 105+



COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 8, delete "Except for those instances involving liens described in".

Page 2, line 9, delete "IC 32-28-3-1, a" and insert "A".

Page 2, after line 18, begin a new paragraph and insert:

"(e) Subsection (d) does not apply to a municipal sewer lien under IC 36-9-23."

and when so amended that said bill do pass.

(Reference is to HB 1365 as printed February 27, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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